June 2009, Page 22

Ethical Issues in Indigent Defense: The Continuing Crisis of Excessive Caseloads

By Steven N. Yermish

A client is a client, whether privately retained or court-appointed. The ethical rules relevant to representing an accused in a criminal court in this country apply equally to the attorney for the wealthy and the indigent. Yet, there are certain ethical issues that particularly arise in the representation of the indigent accused. And one such issue has probably become the foremost in criminal practice today.

Much has been written about the chronic underfunding of indigent criminal defense in the United States. In the face of severe government revenue shortfalls, indigent defense has been a favorite target for cost savings at the expense of the constitutional rights of the poor in our courtrooms. This situation has resulted in lower salaries and a higher turnover rate among young public defenders, outrageously excessive caseloads, and a lack of crucial resources such as expert witnesses, investigative services, and mitigation and disposition specialists. For the criminal defense attorney representing indigent clients, this crisis presents a unique set of ethical issues, pitting the lawyer against the court, the prosecution, his own office management, or his own client in the search for a responsible answer.

In May 2006, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 06-441, entitled "Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation."1 In that opinion, for the first time, the ABA addressed the ethical issues arising from the excessive caseloads borne by public defenders and court-contracted or appointed counsel for indigent criminal defendants.2
In a December 2006 article in The Champion, Professor Norman Lefstein and Georgia Vagenas examined the issues, obligations, and remedies addressed in Opinion 06-441 and the potential ramifications of the opinion.3 Their article concluded with an ominous observation: that there appeared to be an unexpected and lamentable dearth of litigation implicating Opinion 06-441 in the months immediately following its issuance. This article will examine some of the recent excessive caseload litigation arising since the 2006 article by Lefstein and Vagenas and the judicial resolutions in those cases. Moreover, this article will discuss some of the ramifications of laboring under an excessive, and often unmanageable, caseload.

General Ethical Principles
The ethical principles commonly relevant to the criminal defense lawyer differ slightly from state to state, but are uniformly drawn from the American Bar Association's Model Rules of Professional Conduct.4 Forty-nine states have adopted the Model Rules in whole or in substantial part.5

A lawyer must act as a zealous advocate for his client.6 He must act with diligence7, competence,8 and expedience in advancing the client's interests.9 He must maintain the confidentiality of the client's communications with him.10 And he must communicate with the client to keep him "reasonably informed" about the status of the case, "reasonably consult with the client about the means by which the client's objectives are to be accomplished," and "promptly comply with [the client's] reasonable requests for information."11

The division of decision-making authority in the course of a criminal case representation is also explicitly set forth in the Model Rules. The client retains the absolute right to decide whether to plead guilty or go to trial, whether to testify, and whether to be tried by a judge or jury.12 The lawyer controls the strategic decisions, such as whether to call witnesses, which witnesses to call, whether to cross-examine prosecution witnesses, and the manner of the cross-examination.13

A client is a client, and so a public defender has the same duties and responsibilities to provide independent, zealous representation of an indigent client as would a lawyer in private practice who was privately retained.14 Whether the client is paying $500 per hour or the lawyer is being paid $45 per hour by the county (with a $750 cap on the fee), the rules do not distinguish. The ethical duties remain the same.

Funding Crisis: Excessive Caseload15

There can be little question that the courts in general, and indigent defense in particular, are substantially underfunded by state legislatures in the United States.16 The underfunding of indigent defense may take several forms. For the court-contracted attorney, a low monthly fee for unlimited case representation often creates overwhelmingly excessive caseloads.17 Court-appointed counsel have grossly de minimis hourly rates or case fee caps, or both.18 Public defender offices are allocated insufficient funding that prevents: (a) hiring of an adequate number of attorneys, (b) retention of young or mid-level attorneys, and (c) funding or sufficient funding for investigators, expert assistance, and mitigation or dispositional social workers. In addition, separate court budgets for costs required by court appointed experts are closely guarded by judges, sometimes too closely.19

The ultimate impact of this underfunding crisis is that public defenders are saddled with an excessive and unmanageable caseload and lack the necessary resources to properly represent their clients. This obviously raises substantial ethical issues. These issues have not gone without judicial recognition.20 After all, as the Florida Supreme Court observed: “[A]n inundated attorney may be only a little better than no attorney at all.” 21And as funding continues to decrease, one can only expect the prevalence of ethical dilemmas for public defenders will increase.

An excessive caseload may create a conflict of interest.22 Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.23 The impact of an excessive caseload is to delay the litigation, which can violate constitutional rights.24 These situations violate the due process and effective assistance rights of indigent clients.25

What Is an Excessive Caseload?

Just what constitutes an “excessive caseload”? The American Bar Association and the National Legal Aid and Defender Association (NLADA) have adopted a caseload limit standard of 150 total non-capital felony cases per year.26 Many state bars or public defender associations have adopted these standards or set their own, often higher, standards. For example, Georgia has adopted the ABA-NLADA felony standards, while modifying the juvenile caseload limit standard.27 The Nevada Supreme Court accepted a recommended maximum caseload of 192 felonies and gross misdemeanors annually.28 In Indiana, the Public Defender Commission has established varying caseload limits depending on the type of case and the public defender’s available support staff,29 while the Florida Public Defender Association set a 200 case per year limit for a felony caseload.30

Opinion 06-441 does not set a hard and fast numerical rule, but rather provides: “If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation.”31 The opinion sensibly recognizes that “[n]ational standards as to annual numerical caseload limits” cannot be controlling.32 Rather, whether a caseload is excessive depends on “such factors as case complexity, the availability of support services, the lawyer’s experience and ability, and the lawyer’s non-representational duties.”33

Notwithstanding the efforts of national and state organizations and courts to establish reasonable caseload standards for public defenders, the actual caseloads for many, if not most, public defenders substantially exceed those numbers.34 In some jurisdictions, the numbers are staggering.35

Ethically Required Action and Remedies

Consider the attorney who has a caseload with numbers so high that the attorney has no time to interview clients, investigate clients’ cases, or otherwise represent them in accordance with

the rules of professional conduct in the attorney's jurisdiction. What are the attorney's ethical duties? What is the attorney's remedy? Opinion 06-441 offers the advice needed to answer these questions.

Opinion 06-441 "begins by noting that an attorney has a duty to be both competent and diligent, and also to communicate with the client concerning the representation."36 If an attorney's caseload becomes so onerous as to preclude diligent, competent representation,

[t]he opinion suggests the courses of action defenders should follow when that duty is threatened by an excessive caseload. This can occur: (1) when a lawyer's cases are assigned by the court, and (2) when cases are assigned to the lawyer by the public defender's office or other source, such as a law firm. In the first situation, when a caseload has become excessive or additional cases will render the lawyer's workload excessive, appropriate actions include asking that the court not assign new cases until the caseload permits the rendering of competent representation. Alternatively, if the matter cannot be resolved through such a request, "the lawyer should file a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients."37

If the request to withdraw is denied, the lawyer must take "all steps reasonably feasible to insure that her client receives competent and diligent representation."38This includes appealing the adverse ruling.39 During the pendency of an appeal, or if "an appeal is either unavailable or unsuccessful, the court's order must be obeyed … [or the lawyer] risks being held in contempt."40

Opinion 06-441's advice does not end there. Lefstein and Vagenas state:

Where a lawyer's excessive caseload is distributed by the public defender office or other source (e.g., a law firm under contract), [Opinion 06-441] suggests a course that is necessarily different from when the court assigns the caseload. In this situation, the lawyer, with permission of his or her supervisor, must seek a solution by transferring cases to another lawyer in the office whose workload is not excessive or "transferring non-representational responsibilities within the office."41

Should the supervisor disagree with the lawyer's position,42 or refuse to acknowledge the problem, Opinion 06-441 provides that the lawyer "should continue to advance up the chain of command within the office until either relief is obtained or the lawyer has reached and requested assistance or relief from the head of the public defender's office."43

If after appealing to the supervisor, the head of the office, and the agency's governing board, "the lawyer is still not able to obtain relief, [he should file] a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients."44

Opinion 06-441 notes that "[Model] Rule 5.2 makes clear that subordinate lawyers are not insulated from violating the Rules of Professional Conduct and suffering the consequences merely because they acted in accordance with a supervisory lawyer's advice or direction unless it was in regard to "an arguable question of professional duty."45 Thus, the front-line public defender cannot stand idly by if his superiors unreasonably fail to act in the face of the lawyer's legitimate complaints about his excessive caseload.

Recent Case Developments

The Miami Public Defender litigation has received a great deal of attention in the professional and public media.46 Yet it remains a work in progress. While the Blake Order found "the evidence shows that the number of active cases is so high that the assistant public defenders are, at best, providing minimal competent representation" to their clients,47 the Florida District Court of Appeal nevertheless stayed implementation of the order pending appeal. The Third District Appellate Court in Florida overturned the lower court ruling allowing the Miami-Dade Public Defender to refuse third-degree felony cases. The concurring opinion is especially harsh, calling the case "nothing more than a political question masquerading as a lawsuit.'' The next step is to seek review in the state supreme court.48

Of course, the caseloads of the Miami assistant public defenders have continued to rise during the pendency of the appeal. In taking "all steps reasonably feasible to insure that [the

office's clients receive] competent and diligent representation," the Public Defender commenced a policy of making written notification to clients who are not in custody, advising them that excessive caseload considerations may preclude their assigned lawyer from preparing their cases for trial. This step is in keeping with the ethical duties concerning communication set forth in Model Rule 1.4.49

While the Miami case is an excellent example of how a public defender's office should conduct itself consistent with the duties and obligations established in Opinion 06-441, a recent California decision stands in stark contrast. On March 10, 2009, California's intermediate appellate court issued its opinion in In re E.S.,50 in which the court reversed a juvenile delinquency finding. The appellate court based its dismissal upon, inter alia, ineffective assistance of counsel for the public defender's failure to move for a substitution of counsel when he knew that he was unable to devote the time and resources necessary to properly defend the juvenile client.

Relying upon Opinion 06-441, the court noted "[trial counsel's] declaration [that] makes clear his awareness that his heavy caseload and the inadequate resources of the Mendocino Public Defender's Office made it "impossible for [him] to thoroughly review and litigate [appellant's] case." 51Importantly, the trial attorney declared "that he brought this problem to the attention of his supervisor, the Mendocino Public Defender, but to no avail. … The public defender himself [did not] independently seek the withdrawal of his office in appellant's case, as he might have done."52 Finding that the public defender and his supervisor or agency head took no steps to alleviate the compromised representation caused by the excessively heavy caseload, the court readily concluded that the defendant was rendered ineffective assistance of counsel.

Practical Effect and Duties: Plea or Trial?
The impact of excessive caseloads is obvious, and has been documented repeatedly, but its deleterious effect upon defendants (and the reputation of the legal profession) warrants review. Backus & Marcus noted several examples:

An attorney was found to have entered pleas of guilty for more than 300 defendants without ever taking a matter to trial. In one case from Mississippi, a woman accused of a minor shoplifting offense spent a year in jail, before any trial, without even speaking to her appointed counsel. In some places, one lawyer may handle more than 20 criminal cases in a single day, with a flat rate of $50 per case. In others, some defense lawyers providing counsel to indigent defendants under a state contract system can be responsible for more than 1,000 cases per year. In one major metropolitan area, San Jose, Calif., numerous defense attorneys failed to take simple steps to investigate and prepare their cases for trial. Some attorneys went to trial without ever meeting their clients outside the courtroom. Some neglected to interview obvious alibi witnesses. Some accepted without question reports from prosecutors' medical and forensic experts that were ripe for challenge.53

Perhaps the most common, and significant, impact of the excessive caseload dilemma is the creation of the "meet 'em and plead 'em" attorney, who has no meaningful communication with the client before urging an uninformed guilty plea.54 While time pressures in a busy legal practice, especially in one with a burdensome caseload, are inevitable, they are never an excuse for failing to zealously and diligently represent a client. Advising a client to plead guilty in the absence of any meaningful communication with him or investigation of his case can lead to disastrous results.55

This possibility is hardly a new phenomenon. As early as 1917, one commentator noted:

[A]ssigned counsel, whose retained clients are his chief concern, easily convinces himself that he has done his duty to his pauper client if the prosecutor will accept a plea of guilty to a lesser form of crime or be content to recommend a moderate sentence. … That such a system results in innocent men being branded and punished as criminals admits of no doubt.56

There is no doubt that indifferent lawyers, incompetent in the preparation for, and at, trial account for an untold number of innocent defendants wrongfully convicted. The Innocence Project, its state counterparts, and Centurion Ministries have made that fact clear and unimpeachable.57 But what about the competent, professional, well-intentioned public defender who is simply too busy? What of the plea bargaining process under those

circumstances?

Plea bargaining is a fact of life and is “essential to the functioning of the criminal justice system.”58 Of course, the system assumes that defendants are advised by “competent counsel” and therefore “are presumptively capable of intelligent choice in response to prosecutorial persuasion, and [are] unlikely to be driven to false self-condemnation.”59

Whether or not to plead guilty is a decision for the client. Yet it is entirely proper for a lawyer to advise a client to plead guilty; indeed it is his responsibility to do so if the case warrants it. A lawyer is obligated to give his best professional advice, even if that advice is to plead guilty.61 Indeed, if a case is “bad” or “hopeless,” based on the evidence, there is nothing wrong with a lawyer telling that to his client and urging him to plead guilty.62 A lawyer “must advise a defendant of the negative consequences of demanding a trial versus taking a plea offer, and therefore whether a particular plea offer appears desirable.”63

Do innocent people plead guilty? Yes. Are they all the victim of incompetent lawyers? No. There are a number of reasons an innocent client might plead guilty notwithstanding his lawyer’s advice not to do so. In an opinion piece in 1992, Nathan Dershowitz correctly observed that:

The reasons that innocent people would plead guilty are numerous. Sometimes defendants are convinced that they will be convicted anyway, that they may be convicted of a more serious crime if they go to trial or even that by pleading guilty they will spend less time in jail, because of pretrial detention, than they would if they went to trial.64

But when an innocent defendant pleads guilty at the urging of his counsel, who has failed to live up to the professional standards established under the rules of professional conduct, then not only has an injustice been done, the lawyer has also sullied the profession.

One example is the case of Larry Bostic. He spent 18 years in a Florida prison for a rape he did not commit.65 He claims that his trial counsel “coerced” him to take a plea out of a fear of a possible life sentence.66 Whether his counsel believed him guilty or not, if in fact he “coerced” Bostic to take a plea, he was wrong. Guilt is not the issue, and every attorney should be prepared to abide by his client’s decision and proceed to trial, as prepared as possible.

If a client wishes to mount a vigorous defense even though he is guilty, the attorney’s professional duty is to zealously represent his interests and advance that defense. This is not unlike the situation in which the attorney thinks that a tendered plea bargain is advantageous and attempts to convince the client that it should be accepted, but the client persists in his or her wish to go to trial. The attorney may well be correct that the plea bargain in question is far more advantageous than facing the much greater risk of trial, but if the attorney is unable to convince the client of this, then the attorney is duty-bound to try the case and to do the best possible job under the circumstances.67

There is a clear ethical mandate to the criminal defense lawyer; the lawyer cannot pressure a client to take a plea because the lawyer does not have the time for the trial. Plea bargaining is a way of life, without which our criminal justice system would collapse. But an excessive caseload must not be a factor considered when advising a client concerning a plea offer. The attorney’s advice must be without regard to other clients or considerations.

There is a simple rule of thumb to follow. If the attorney finds herself encouraging a client to take a plea because she is thinking about the time it will save her, she may have too many cases to properly and ethically represent that client. If an attorney is not getting timely required work done on clients’ cases or is finding that she does not have the time to interview a client to obtain all of the pertinent information about him or his case, then that attorney may have too many cases to properly and ethically represent clients. And if any of these things are true, then the attorney may need to pass on the next few calls from the court asking her to accept another appointment, or it may be time to file a motion to withdraw.

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Notes

1. ABA Committee on Ethics and Prof'l Responsibility, Formal Op. 06-441 (May 13, 2006) (hereinafter "Opinion 06-441").
2. Opinion 06-441 defines "public defender" as "both a lawyer employed in a public defender's office and any other lawyer who represents, pursuant to court appointment or government contract, indigent persons charged with criminal offenses. Opinion 06-441, at p.2 n.3. For purposes of this article, I will refer generally to all counsel representing the indigent accused as "public defenders", consistent with the ABA opinion.
3. Norman Lefstein & Georgia Vagenas, Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action, The Champion, December 2006 at 10.
4. Hereinafter referred and cited to as the "Model Rules."
5. Only California has not adopted the Model Rules. See American Bar Association, Center for Professional Responsibility report, which may be found at www.abanet.org/cpr/mrpc/alpha_states/html (last checked March 15, 2009). However, California courts have held that the Model Rules may be "helpful and persuasive in situations where coverage of state disciplinary rules is unclear or inadequate." Frye v. Tenderloin Housing Clinic, Inc. 38 Cal. 4th 23, 52 fn.12, 129 P.3d 408, 426 (2006).
6. Model Rule 1.3, cmt. 1.
7. Model Rule 1.3 (A lawyer shall act with diligence and promptness in representing a client.).
8. Model Rule 1.1 (A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation necessary for the representation.).
9. Model Rule 3.2 (A lawyer shall make efforts to expedite litigation consistent with the interests of the client.).
10. Model Rule 1.6.
11. Model Rule 1.4.
12. Model Rule 1.2(a).
13. Id., cmt. 2.
14. West v. Atkins, 487 U.S. 42, 50 (1988) (citing Polk County v. Dodson, 454 U.S. 312 (1981).
15. There has been substantial literature addressing this issue. See, e.g., Malia Brink, Indigent Defense, The Champion, February 2008 at 43 (addressing excessive caseload litigation developments in Arizona, Illinois, and Nevada); G. Paul Marx, Public Defender Reform Act of 2007: The Process of Reform, 56 La. B.J. 12 (2008) (discussing public defender reform in Louisiana – specifically addressing underfunding and excessive caseload as fundamental problems); Mary Sue Backus & Paul Marcus, The Right to Counsel in Criminal Cases: A National Crisis, 57 Hastings L.J. 1031 (2006) (a comprehensive look at the funding crisis for indigent defense and the courts); and Bruce Green, Criminal Neglect: Indigent Defense From a Legal Ethics Perspective, 52 Emory L.J. 1169, 1171 (2003) (addressing, in the context of Heath v. State, "precisely how economic considerations affect defense representation"). This article does not purport to be a comprehensive legal examination of the issue. Rather, the article offers a primer on the matter with some practical suggestions for the everyday practitioner facing the problem of an excessive caseload. In the articles cited above (and many others), this issue is addressed in great detail and examines many individual cases and systemic examples of the excessive caseload/underfunding problem.
16. See, e.g., Backus & Marcus, supra n.15 at 1045-46.
17. See, e.g., Abbe Smith, The Difference in Criminal Defense and the Difference It Makes, 11 Wash.U.J.L.& Pol'y 83, 128-29 n.250 (2003); Margaret H. Lemos, Note, Civil Challenges to the Use of Low-Bid Contracts for Indigent Defense, 75 N.Y.U. L. Rev. 1808 (2000).
18. See Smith, supra n.17. See also James Liebman, The Overproduction of Death, 100 Colum. L. Rev. 2030, 2102 n.175 (2000).
19. See Nodal v. State, 3 So.3d 439, 440 (Fla. App. 2009) (reversing a double homicide conviction because the trial court denied a defense "motion to appoint an expert neuropsychologist to examine and testify on behalf of the defendant to counter the damaging testimony of a similar expert retained by the state"). The trial judge (now a TV judge) explained that he "felt the defense had their share of experts. Due to budgetary concerns, [he] denied the defense motion because [he] thought having another expert would be duplicative." Miami Herald, March 12, 2009.
20. The Florida Supreme Court recognized the excessive caseload problem for capital cases, and anticipated the need for an overworked defender to refuse or withdraw from a death penalty case. See In re Amendment to Florida Rules of Criminal Procedure-Rule 3.112 Minimum Standards for Attorneys in Capital Cases, 820 So.2d 185 (2002) (adding subsection (j) to Fla. R. Crim. P. 3.112, which sets forth a procedure to be followed in the event a public defender refuses a new capital case appointment due to excessive caseload).
21. In re Certification of Conflict, 636 So.2d 18, 19 (Fla. 1994).
22. See, e.g., In re Order on Prosecution of Criminal Appeals, 561 So.2d 1130, 1135 (Fla. 1990) ("[w]hen excessive caseload forces the public defender to choose between the rights of the various criminal defendants he represents, a conflict of interest is inevitably created"). See

also Model Rule 1.7(a)(2) ("[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client"); Model Rule 1.7, cmt. 8 ("[A] conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.").

23. Wood v. Georgia, 450 U.S. 261, 272 (1981) (citing Cuyler v. Sullivan, 446 U.S. 335 (1980) and Holloway v. Arkansas, 435 U.S. 475 (1978)).

24. United States ex rel. Green v. Washington, 917 F. Supp. 1238, 1270 (N.D. Ill. 1996) (chronic underfunding of a state appellate defender office that results in undue delay in prosecuting appeals violates a defendant's right to due process).

25. United States ex rel. Green v. Washington, 917 F. Supp. at 1270 (N.D. Ill. 1996). See also Diaz v. Judge Advocate General of the Navy, 59 M.J. 34, 38 (U.S. Armed Forces 2003) ("To allow caseloads to become a factor in determining whether appellate delay is excessive would allow administrative factors to trump … due process rights of appellants."); State v. Peart, 621 So.2d 780, 790 (La. 1993) (finding indigent defendants in New Orleans criminal courts were generally not provided effective assistance of counsel because attorneys for indigent defendants had excessive caseloads and were provided inadequate support); United States v. Decoster, 624 F.2d 196, 280 n.89 (D.C. Cir. 1976) (discussing excessive caseload issues that would give rise to ineffective assistance of counsel claims).

26. See Standing Committee on Legal Aid & Indigent Defendants, Ten Principles of a Public Defense Delivery System, at 5 n.19 (2002), available at http://www.abanet.org/legalservices/dowloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf. (hereinafter "the Ten Principles") The Ten Principles also set annual limits of 400 misdemeanors, 200 juvenile cases, and 25 appeals. Id. The felony standard of 150 was originally articulated in 1973 by NLADA. See National Advisory Commission on Criminal Justice Standards and Goals, Standards for the Defense, Standard 13.12 (1973), available at http://www.nlada.org/Defender/Defender_Standards/Standards_for_the_Defense.

27. Georgia Public Defender Standards Council, Standard for Limiting Case Loads and Determining the Size of Legal Staff in Circuit Public Defender Offices (adopted 2004), available at http://www.gpdsc.com/cpdsystem-standards-limiting_caseloads.htm (last visited March 30, 2009) (150 felonies, 300 misdemeanors, 250 juvenile delinquency cases, or 25 appeals).

28. See In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT 411 at p. 5 (Nev. Jan. 4, 2008).

29. Indiana Public Defender Commission, Standards for Indigent Defense Services in Non-Capital Cases, Standard J, pp. 13-17 (2008), available at http://www.in.gov/judiciary/pdc/docs/standards/indigent-defense-non-cap.pdf (last visited March 30, 2009).

30. See Order Granting in Part and Denying in Part Public Defender's Motion to Appoint Other Counsel in Unappointed Non-Capital Felony Cases at p. 4, entered on September 3, 2008, by the Hon. Stanford Blake, the Administrative Judge for the Criminal Division of the Circuit Court in Miami, in State v. Loveridge, et al., Case No. 08-1 (11th Judicial Cir., Fla.) (hereinafter the Blake Order). See also Maureen Dimino, Confronting a Constitutional Crisis, The Champion, October 2008 at 24 (discussing the Miami excessive caseload litigation). This order and the pleadings related to the Miami litigation are available at http://www.pdmiami.com/ExcessiveWorkload/Excessive_Workload_Pleadings.html.

31. Opinion 06-441, at 4. Likewise, the Model Rules set no numerical standard. Rather, the rules provide, "[A] lawyer's work load must be controlled so that each matter can be handled competently." Model Rule 1.3, cmt. 2.

32. Lefstein & Vagenas, supra n.3 at 12 (citing Opinion 06-441 at 4).

33. Id.

34. See, e.g., Backus & Marcus, supra n.15 at 1055-58.

35. See, e.g., id. (noting, inter alia, that in Clark County, Nev., each juvenile public defender had a caseload "approaching 1500"; in Minnesota, public defenders "each handle about 900 cases a year"; and in Rapides Parish, La., "each defender there has a caseload of 472 clients"). See also Kentucky Bar Association, A Resolution Recognizing the Excessive Caseloads Being Handled by Kentucky Public Defenders in Light of the Recent Budget Cuts Require a Reduction in Services in Order to Achieve Ethical Caseload Levels (June 17, 2008) (finding Kentucky public defenders handle an average of 436 felony cases annually with a projected figure of more than 500 cases for fiscal year 2009). In a press release on January 29, 2009, entitled "Public Defender to Decline Clients Due to Case Overload and Inadequate Staffing," announcing his office's refusal to accept new homicide or serious felony cases, the San Francisco public defender noted his deputy public defenders carry an average annual caseload of 301 felony cases and 585 misdemeanor cases. The press release is available at http://sfpublicdefender.org/newsroom/

press-release/public-defender-to-decline-clients-due-to-case-overload-and-inadequate-staffing. The Nevada Supreme Court rule, supra at n.28, was passed in response to a media report of Clark County public defenders having felony caseloads of almost 400 cases. See Las Vegas Rev. J., July 25, 2007, available at http://lvrj.com/news/8698202.html.
36. Lefstein & Vagenas, supra n.3 at 12.
37. Id. (citing Opinion 06-441 at 5) (footnotes omitted).
38. Opinion 06-441 at 6.
39. Id. at 1.
40. Lefstein & Vagenas, supra n.3 at 12.
41. Id. at 13 (footnotes omitted).
42. The supervisor's decision is ordinarily deemed reasonable, in keeping with Model Rule 5.2, as long as he makes a "conscientious effort to deal with workload issues." Id. (citations omitted).
43. Opinion 06-441 at 6.
44. Id. (footnote omitted).
45. Id. at p. 6 n.22.
46. See, e.g., Roberta Mandel, The Appointment of Counsel to Indigent Defendants Is Not Enough: Budget Cuts Render the Right to Counsel Virtually Meaningless, 83 Fla. B.J. 43 (April 2009); Dimino, supra n.30; Miami Herald, Miami-Dade Public Defender Caseload Dispute in Court's Hands (March 31, 2009), available at www.miamiherald.com/news/southflorida/story/976128.html; N.Y. Times, Citing Workload, Public Lawyers Reject New Cases (Nov. 8, 2008), available at www.nytimes.com/2008/11/09/us/09defender.html.
47. Blake Order, supra n.30 at 4.
48. That appeal was argued to the Florida Third District Court of Appeal on March 30, 2009. The court's decision in Florida v. Public Defender, Nos. 3D08-2272, 3D08-2537 (Fla. Dist. Ct. App. May 13, 2009) can be read at http://www.3dca.flcourts.org/Opinions/3D08-2272.pdf.
49. See Lefstein & Vagenas, supra n.3 at 12 (discussing notification of a client under Model Rule 1.4, stating that "if a lawyer seeks to withdraw because she is convinced that competent representation cannot be provided, this is an exceedingly significant development in the client's case, and the client must be told").
50. 171 Cal.App.4th 1219, 90 Cal.Rptr.3d 564 (Cal. App. 2009).
51. Id.
52. Id.
53. Backus & Marcus, supra n.15 at 1035 (citations omitted).
54. See Robert Rigg, The T-Rex Without Teeth: Evolving Strickland v. Washington and the Test for Ineffective Assistance of Counsel, 35 Pepp. L. Rev. 77, 102 (2007) (discussing the "meet 'em and plead 'em" attorney).
55. See n.64 infra. See also Monroe Freedman, An Ethical Manifesto for Public Defenders, 39 Val. U. L. Rev. 911, 920 ("Under no circumstances … should defense counsel recommend to a defendant acceptance of a guilty plea unless appropriate investigation and study of the case has been completed.").
56. Mayer C. Goldman, The Public Defender: A Necessary Factor in the Administration of Justice 21-22 (1917) (quoted and discussed by Professor George Fisher in Plea Bargaining's Triumph, 109 Yale L.J. 857 n.789 (2000)). Goldman also writes:
How many innocent men have pleaded 'guilty' at the suggestion of assigned counsel, because of the latter's indifference or desire to escape the burden of trial, it is impossible to state, their numbers must be legion.
Goldman, supra at 70.
57. For a discussion of the many exonerations of the innocent, review the cases at the Innocence Project and Centurion Ministries Web sites, which may be found at http://www.innocenceproject.org and http://www.centurionministries.org/, respectively. See also Barry Scheck & Sarah Tofte, Gideon's Promise and the Innocent Defendant, The Champion, February 2003, at 38; Death Penalty Information Center, Innocence and the Death Penalty, available at www.deathpenaltyinfo.org/Innocence-and-death-penalty (last checked March 30, 2009).
58. Bordenkricher v. Hayes, 434 U.S. 357, 363-64 (1978) (holding that a prosecutor can threaten reindictment for a more serious charge, assuming such charge is legally available, in order to induce a defendant to accept a plea without violating the Due Process Clause).
59. Id. at 363. See also id. at 373 (Blackmun, J., dissenting) ("this [plea bargaining works effectively] is especially true when a defendant is represented by counsel and presumably is fully advised of his rights").
61. See, e.g., Anderson v. Henderson, 439 F.2d 711, 712 (5th Cir. 1971) ("If the best professional advice that lawyer can give is to enter a plea of guilty, and the accused relies on his lawyer's expertise, the accused cannot later successfully urge that a plea was involuntary on the basis of counsel coercion."); See also United States v. Buckles, 843 F.2d 469, 472

(11th Cir. 1988).
62. Jones v. Wainwright, 604 F.2d 414, 416 (5th Cir. 1979). See also United States v. Juncal, 245 F.3d 166, 172 (2d Cir. 2001) ("defense counsel's blunt rendering of an honest but negative assessment of appellant's chances at trial, combined with advice to enter the plea, [does not] constitute improper behavior or coercion").
63. See Judy Clarke, A Conscience Check, The Champion, April 1997, at 9 (discussing Boria v. Keane, 99 F.3d 492 (2d Cir. 1996), in which the court sustained a challenge to a sentence based on counsel's IAC for failing to advise a client to take a plea where the attorney viewed the client's rejection of the state's offer as "suicidal").
64. Nathan Dershowitz, Why the Innocent Might Plead Guilty, N.Y. Times, June 19, 1992.
65. http://www.floridainnocence.org/
cases.html.
66. Id.
67. Bruce Winick, Applying the Law Therapeudically in Domestic Violence Cases, 69 U.M.K.C. L. Rev. 33, 69 n.185 (2000).

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